



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DEC 22 2008

Dr. Dwight Pfennig, Superintendent
Pocono Mountain School District
Pocono Mountain School Road
Swiftwater, PA 18370

Re: Pocono Mountain School District
Notice of Noncompliance and Request to Show Cause
Case Number: A-09-007

Dear Dr. Pfennig:

Please be advised that on the basis of an on-site school inspection, interviews, and a review of pertinent documents, the United States Environmental Protection Agency, Region III ("EPA" or "the Agency") has determined that Pocono Mountain School District has failed to comply with certain requirements of the Toxic Substances Control Act ("TSCA" or "the Act"), 15 U.S.C. §§ 2601 to 2692, subchapter II of TSCA, know as the Asbestos Hazard and Emergency Response Act ("AHERA") and its implementing regulations promulgated at 40 C.F.R. Part 763, Subpart E. The Agency is sending this to your attention because you are considered to be the Local Education Agency ("LEA") for the Pocono Mountain East High School located at Pocono Mountain School Road, Swiftwater, Pennsylvania; Barrett Elementary Center located at Route 390, Cresco, Pennsylvania; Clear Run Elementary Center located at 3700 Memorial Boulevard, Tobyhanna, Pennsylvania; Coolbaugh Elementary Center located at 194 Main Street, Tobyhanna, Pennsylvania; and Pocono Elementary Center located at Warner Road, Tannersville, Pennsylvania ("the Five Schools") as defined in 40 C.F.R. § 763.83. A LEA is defined as including "a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools." As a result of these findings, the Agency is issuing you this Notice of Noncompliance ("NON") and Request to Show Cause why EPA's information is not correct and why additional enforcement action is not appropriate for these violations. A description of the relevant facts and a list of the specific violations identified by EPA are outlined immediately below.

I. RELEVANT FACTS

Set forth below is a recitation of the facts relevant to EPA's determination that the Pocono Mountain School District was in violation of TSCA requirements governing asbestos-containing



materials ("ACM") in schools at the time of inspections conducted from March 11, 2008 through March 12, 2008 by the Environmental Protection Agency ("EPA").

On March 11 and March 12, 2008 an authorized representative of EPA conducted inspections at the Five Schools pursuant to TSCA. During the inspection, the EPA inspector interviewed the District's custodial supervisor and reviewed relevant files and discovered that Pocono Mountain School District had failed to:

- a) provide annual written notification to each parent, teacher and employee organizations or groups of the availability of the school's management plan, and maintain a description of the steps taken to notify parent, teacher and employee organizations or groups of the availability of the school management plans, along with a dated copy of each such notice;
- b) conduct an initial inspection of school building(s);
- c) provide at least 2 hours of asbestos awareness training to all members of its maintenance custodial staff;
- d) maintain in each school's administrative office a complete, updated copy of the management plan for the school; and
- e) provide the required training to the designated person.

II. TSCA/AHERA VIOLATIONS

EPA has determined that violations of the following TSCA/AHERA regulatory requirements occurred within the Five Schools. Based upon the information currently available, EPA also has determined that the issuance of an Administrative Complaint is the appropriate enforcement response to address these violations of the Act.

A. Failure to Provide Parent, Teacher and Employee Organization Notification and Related Recordkeeping

Section 40 C.F.R. § 763.93(g) (4) requires that:

Upon submission of its management plan to the Governor and at least once each school year, the local education agency shall notify in writing parent, teacher, and employee organizations of the availability of management plans and shall include in the management plan a description of the steps taken to notify such organizations, and a dated copy of the notification. In the absence of any such organizations for parents teachers or employees, the local education agency shall provide written notice to that relevant group of the availability of management plans and shall include in the management plan a



description of the steps taken to notify such groups, and a dated copy of the notification.

As a result of the inspections conducted March 11, 2008 and March 12, 2008, EPA found that Pocono Mountain School District had not been providing written notification to parent, teacher, and employee organizations or groups, and including in the management plan a description of the steps taken to notify such organizations or groups, or dated copies of such notification for each of the Five Schools. Based on currently available information, EPA concludes that the Pocono Mountain School District failed to comply with the parent, teacher, and employee organization or group notification requirements and related recordkeeping requirements of 40 C.F.R. § 763.93(g)(4).

B. Failure to Conduct Initial Inspections

Section 40 C.F.R. § 763.85(a) requires that:

(1) Except as provided in paragraph (a) (2) of this section, before October 12, 1988, local education agencies shall inspect each school building that they lease, own, or otherwise use as a school building to identify all locations of friable and nonfriable ACBM.

(2) Any building leased or acquired on or after October 12, 1988, that is to be used as a school building shall be inspected as described under paragraphs (a)(3) and (4) of this section prior to use of a school building.

Section 40 C.F.R. § 763.99(a)(7) provides an exclusion from the requirement to inspect school buildings if:

An architect or project engineer responsible for the construction of a new school building built after October 12, 1988, or an accredited inspector signs a statement that no ACBM was specified as a building material in any construction document for the building, or to the best of his or her knowledge, no ACBM was used as a building material in the building. The local education agency shall submit a copy of the signed statement of the architect, project engineer, or accredited inspector to the EPA Regional Office and shall include the statement in the management plan for that school.

Based on the inspection conducted March 11, 2008 and March 12, 2008, EPA found that Pocono Mountain School District had not completed inspections of Barrett Elementary Center, Pocono Mountain East High School, Clear Run Elementary Center, Pocono Elementary Center, and the modular classrooms at Coolbaugh Elementary Center. Based on currently available information, EPA concludes that the Pocono Mountain School District failed to comply with the inspection requirements of 40 C.F.R. § 763.85(a) for such school buildings. If, however, Pocono Mountain School District is able to submit signed statement(s) showing that no ACBM

was specified or used as building materials in the construction of the Barrett Elementary Center, Pocono Mountain East High School, Clear Run Elementary Center, Pocono Elementary Center, and/or the modular classrooms at Coolbaugh Elementary Center in accordance with 40 C.F.R. § 763.99(a)(7), EPA may instead conclude that Pocono Mountain School District failed to comply with the requirements of 40 C.F.R. § 763.99(a)(7) for such schools.

C. Failure to Provide Maintenance and Custodial Staff with Asbestos Awareness Training

Section 40 C.F.R. § 763.92(a)(1) requires that:

The local education agency shall ensure...that all members of its maintenance and custodial staff...who may work in a building that contains ACBM receive awareness training of at least 2 hours.

During the inspections conducted March 11, 2008 and March 12, 2008, EPA found that Pocono Mountain School District's maintenance and custodial staff for all schools had not received at least 2 hours of asbestos awareness training. Based on currently available information, EPA concludes that Pocono Mountain School District failed to comply with training requirements of 40 C.F.R. § 763.92(a) (1).

D. Failure to Make Management Plan Available

40 C.F.R. § 763.93(g) (1)-(3) requires that LEAs shall:

Maintain complete and updated copies of management plans in LEA and School administrative offices, and make them available for inspection.

At the time of the TSCA/AHERA inspection conducted by EPA March 11, 2008 and March 12, 2008, copies of the management plan were not available at each of the Five Schools. As a result, and based on currently available information, EPA concludes that the Pocono Mountain School District failed to comply with the management plan requirement of 40 C.F.R. § 763.93(g) (1)-(3).

E. Failure to Train Designated person

40 C.F.R. § 763.84(g) (2) requires each LEA to:

Ensure that the designated person receives adequate training to perform duties assigned under [40 C.F.R. § 763.84]

During the inspections conducted March 11, 2008 and March 12, 2008, EPA found that Pocono Mountain School District's Designated Person for the Five Schools had not received the required training. Based on currently available information, EPA concludes that Pocono

Mountain School District failed to comply with the designated person training requirements of 40 C.F.R. § 763.84(g)(2).

III. REQUEST FOR INFORMATION AND CERTIFICATION, TO SHOW CAUSE
&
OPPORTUNITY TO CONFER

To facilitate settlement discussions and to supplement EPA's understanding of the compliance activities, if any, taken at the school subsequent to the above-referenced inspection, EPA requests that you submit such additional documentation which may be in your possession or control that identifies any and all measures taken to address the violations identified herein. If the compliance measures identified are planned or are on-going, please provide a schedule for when the compliance measures will be completed. Such information must be submitted, within thirty (30) days of receipt of this NON to Richard Ponak (3LC62), Asbestos Enforcement Officer, United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.

If you have additional information relevant to this matter which you believe EPA should consider prior to filing a formal Administrative Complaint, EPA similarly requests that you provide such information, and show cause why an Administrative Complaint should not be issued, within twenty-one (21) calendar days of receipt of this NON. In addition, EPA invites you to meet with EPA within forty-five (45) calendar days of receipt of this letter to discuss the potential administrative resolution to these violation(s). If you do not respond within twenty-one (21) calendar days of receipt of this letter or we have not reached a satisfactory administrative resolution of these violations within ninety (90) calendar days of receipt of this letter, the Agency will determine an appropriate enforcement response without further prior notice to you.

EPA is enclosing for your information and review a copy of the AHERA regulations, EPA's January 31, 1989 Interim Final Enforcement Response Policy for AHERA, and a copy of 40 C.F.R. Part 19 (entitled "Adjustment of Civil Monetary Penalties for Inflation"). In determining the amount of any penalty to propose in an enforcement action for violations of the Act, TSCA Section 207(a) and (c), 15 U.S.C. § 2647(a) and (c), require EPA to take into consideration a violator's culpability, history of previous TSCA violations, ability to pay the penalty, and ability to continue to provide educational services to the community, in addition to such other matters as justice requires (including voluntary disclosure and attitude of the violator).

Please note that TSCA § 207(a), 15 U.S.C. § 2647(a), additionally provides that the court shall order that any civil penalty collected under [subsection II of AHERA] be used by the LEA for purposes of complying with AHERA. Any portion of the civil penalty remaining unspent after compliance by an LEA is completed shall be deposited into the Asbestos Trust Fund established by Section 4022 of Title 20.

In keeping with this provision, EPA's revised Enforcement Response Policy directs that civil penalties which are assessed against LEAs such as the Pocono Mountain School District shall be reduced on a dollar for dollar basis by the cost of compliance with AHERA. As a result,

EPA specifically offers you the opportunity to propose one or more TSCA/AHERA compliance projects that the Pocono Mountain School District may be willing to undertake at the school building such that all or a portion of the civil penalties which EPA may propose for the violations documented herein may be used by the Pocono Mountain School District to comply with TSCA/AHERA requirements rather than collected by the Agency as a penalty to be deposited into the Federal Treasury.

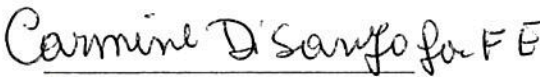
For your further information and support, EPA is also enclosing an Information Sheet entitled "U.S. EPA Small Business Resources", (EPA-300-F-03-001, May 2003), which identifies a variety of compliance assistance and other tools available to assist small businesses in complying with Federal and State environmental laws.

Please send any and all information, and direct any request for a settlement conference, to the attention of:

Richard Ponak
Enforcement Officer
U.S. Environmental Protection Agency - Region III
Land and Chemicals Division (3LC62)
1650 Arch Street
Philadelphia, PA 19103-2029

Furthermore, to schedule a settlement conference or if you have any questions concerning this matter, please contact Richard Ponak at (215) 814-2044.

Sincerely,


Fatima El Abdaoui, Chief
Pesticides and Asbestos Programs Branch

Enclosures

cc: R. Koppenhaver, PADEP
Richard Ponak